STATE OF MICHIGAN

COURT OF APPEALS

MARY WEBB,

Plaintiff-Appellee,

v

JAMES WEBB,

Defendant-Appellant.

UNPUBLISHED
March 1, 2005

No. 250388
Oakland Circuit Court
LC No. 2000-634394-DM

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals by leave granted a circuit court order requiring him to pay $235 a week in child support for his three minor children and ordering plaintiff to prepare an amended judgment of divorce to reflect the parties' division of rental properties pursuant to their pre-judgment settlement agreement. We affirm.

I

According to defendant, prior to their divorce, the parties entered into a settlement whereby plaintiff would receive a larger portion of the parties' rental properties in lieu of child support. However, this understanding was not reflected in the parties' consent judgment of divorce. Instead, the order simply, but inaccurately, provided that child support was not being ordered because the parties were "sharing equally in the responsibility of the minor children." Further, the July 2000 judgment identified the rental properties allocated to defendant, but neglected to include the significant number of properties granted to plaintiff. Approximately fourteen months after the divorce judgment was entered, citing changed circumstances, plaintiff requested an "increase"[1] in child support. Defendant opposed the "increase" in child support and urged the court to recognize the income for the excess[2] rental properties that plaintiff received

[1] Plaintiff claimed that her subsequent disability and decrease in the value of rental properties changed circumstances that warrant a child support determination by the court.

[2] Because plaintiff received thirty-five properties and defendant only five, defendant says that this property settlement favored plaintiff and was in lieu of child support.

and to credit that amount against his child support obligation. The trial court granted plaintiff's motion to modify child support without awarding defendant the credit he sought, and also ordered plaintiff to prepare an amended judgment of divorce that reflected the parties' July 2000 property division agreement. Defendant sought leave to appeal the trial court's order and this Court granted the application, limited to the issue "whether the trial court erred by adopting the parties' property settlement after ordering defendant to pay child support."

II

Defendant argues that it was inequitable for the trial court to enforce the parties' alleged "lopsided" property division without also enforcing the parties' agreement to give him credit against his child support obligation based on the excess rental properties that plaintiff received.

Our review of the record reveals that the trial court did not "enforce" the parties' property division agreement. Rather, the trial court noted that the agreement did not appear in the original judgment of divorce, and the trial court simply ordered that the judgment be amended to remedy this. The trial court may sua sponte correct the judgment at any time. MCR 2.612(A).

Defendant maintains that his child support obligation should be offset by the income received from the rental properties given to plaintiff, and that this, in fact, was the parties' agreement. However, the parties' testimony at the evidentiary hearing did not indicate that they agreed to credit defendant's child support obligation with amounts attributable to rental income. Rather, the parties agreed that defendant had no obligation to pay child support. Such an agreement is generally unenforceable, though the parties, in theory, agree to a property division in reliance on no child support payments. *Carlston v Carlston*, 182 Mich App 501, 505; 452 NW2d 866 (1990); *Adamczyk v Adamczyk*, 155 Mich App 326; 399 NW2d 508 (1986). However, the trial court *may* enter a child support order that is agreed upon by the parties if certain statutory requirements are met. MCL 552.605(3). However, the court may only enter a child support order that deviates from the support formula if "application of the child support formula would be unjust or inappropriate." MCL 552.605(2).[3]

The trial court ordered child support pursuant to the Friend of the Court child support guidelines. The trial court's calculations carefully took the parties' financial situations into account, including the value of property owned by the parties and the income from that property. Because the trial court carefully considered the medical and financial positions of both parties in determining the award of child support pursuant to the Friend of the Court formula, it does not appear that the application of the formula "would be unjust or inappropriate," and further that the trial court properly exercised its discretion when it chose not to deviate from the support formula.

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[3] MCL 552.605 provides that even if the statutory requirements for deviation from the child support formula are met, the trial court "*may*" enter an order that deviates from the formula. MCL 552.605(2) (emphasis added). By its use of the word "may," the Legislature clearly intended to leave the decision to the sound discretion of the court. See *AFSCME Council 25 and Local 1416 v Highland Park Board of Education*, 214 Mich App 182, 186; 542 NW2d 333 (1995), aff'd 457 Mich 74; 577 NW2d 79 (1998).

Accordingly, for all the foregoing reason, we hold that the trial court did not err when it entered its revised judgment.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski